

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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UNITED STATES OF AMERICA,

Plaintiff,

v.

**ORDER**

Criminal File No. 09-193 (MJD/AJB)

(1) RUSSELL ADAM COLE and  
(2) ABBY RAE COLE,

Defendants.

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Nicole A. Engisch and William J. Otteson, Assistant United States Attorneys,  
Counsel for Plaintiff.

Andrew M. Luger and David J. Wallace-Jackson, Greene Espel PLLP, Counsel for  
Defendant Russell Adam Cole.

Andrew M. Luger and David J. Wallace-Jackson, Greene Espel PLLP, and Shelly  
B. Kulwin, Kulwin, Masciopinto & Kulwin, LLP, Counsel for Defendant Abby  
Rae Cole.

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This matter is before the Court on the parties motions in limine. Based on  
the parties' submissions and upon review of the files, record and proceedings

herein, IT IS HEREBY ORDERED:

1. Defendants' Motion in Limine No. 1 to Exclude Evidence of the Loading Dock Incident [Docket No. 119] is **GRANTED IN PART AND DENIED IN PART**, such that the Government may not introduce evidence of this incident in its case in chief.
2. Defendants' Motion in Limine No. 2 to Exclude Evidence of Prescription Drug Purchases and Use [Docket No. 121] is **GRANTED**.
3. Defendants' Motion in Limine No. 3 to Exclude Evidence of Defendants' Purportedly Extravagant Lifestyle [Docket No. 123] is **DENIED**.
4. Defendants' Motion in Limine No. 4 to Exclude Evidence of Defendant Russell Cole's Demeanor and Treatment of Employees [Docket No. 125] is **GRANTED IN PART AND DENIED IN PART**, such that the Government may not introduce evidence of this incident in its case in chief.
5. Defendants' Motion in Limine No. 5 to Exclude Evidence of Creditor Obligations [Docket No. 127] is **DENIED**.
6. Defendants' Motion in Limine No. 6 to Exclude Evidence of the Football Incident [Docket No. 129] is **DENIED**.
7. Defendants' Motion in Limine No. 7 to Exclude Evidence of Pre-Program Gifts [Docket No. 131] is **DENIED**.
8. Defendants' Motion in Limine No. 8 to Exclude Evidence of Prior Business Practices [Docket No. 133] is **DENIED**.

9. Defendants' Motion in Limine No. 9 to Exclude Evidence of the Merchandise Incident [Docket No. 135] is **RESERVED**.
10. Defendants' Motion in Limine No. 10 to Exclude the Core Receivable Incident [137] is **DENIED** because proof of this event not specified as an overt act in the conspiracy count is not a constructive amendment of the indictment.
11. Defendants' Motion in Limine No. 11 to Exclude Unfairly Prejudicial Statements of Witness Michael A. Hartman, C.P.A. [138] is **DENIED**.
12. Defendants' Motion in Limine No. 12 to Exclude Unfairly Prejudicial Statements of Janyce Barkan [140] is **DENIED**.
13. Defendants' Motion in Limine No. 13 to Exclude Unfairly Prejudicial Statements of Stephen Kozer [158] is **RESERVED**.
14. Defendants' Motion in Limine No. 14 to Exclude Proposed Government Exhibit 147 [174] is **GRANTED IN PART AND DENIED IN PART**, such that the e-mail will be admissible with the first two full paragraphs redacted.
15. The Government's Motion in Limine to Preclude Impeachment Through Specific Instances of Prior Acts [149] is **DENIED** as premature. The Court presumes that the parties understand and will follow the Federal Rules of Evidence.
16. The Government's Motion in Limine to Preclude a Defendant from Offering Evidence of "Good Character" Other than Through Opinion or Reputation [150] is **DENIED** as premature. The Court presumes that the parties understand and will follow the Federal Rules of Evidence.
17. The Government's Motion in Limine to Preclude Defendants' Proposed Hearsay Exhibits [153] is **RESERVED**.

18. Defendants' letter request for redaction of undercover tape recordings, set forth in Defendants' letter to the Court dated April 13, 2010, is **DENIED**.

Dated: April 15, 2010

s/ Michael J. Davis

Michael J. Davis  
Chief Judge  
United States District Court